The Mental Capacity Act and social care research

by Michael Clark

The Mental Capacity Act (MCA) 2005 came in to force in 2007 in England and Wales and provides a legal framework to protect people who lack the capacity to make decisions for themselves. It has significant implications for health and social care practice, details of which are covered in some excellent resources (for example see SCIE guidance). The Act also has implications for researchers in the field. Michael Clark, from the NIHR School for Social Care Research, describes what should be considered when planning to include people who lack capacity to make decisions in research projects.

The provisions in the MCA for health and social care research are included in Sections 30-33. These clauses make it lawful to conduct intrusive research involving people who lack capacity. The intention behind these sections was to clarify practice in a previously grey area and to enable research to include people. It was not intended to be seen as a barrier to be being inclusive in research.

There are often good ethical and methodological reasons for seeking to include in your research people who lack capacity to consent. They have a right for their interests to be explored in research, which means an obligation on researchers to seek all best practical means to include them as appropriate to the study. Also, without including people who lack capacity there may be biases in the findings of a study. For example, research in nursing homes that excluded people who lack capacity could be missing a significant part of the population of the homes, and therefore producing biased or partial conclusions and recommendations about care in the homes.

The MCA requires all research seeking to include people who lack capacity to obtain approval from an appropriate ethical body, such as the Social Care Research Ethics Committee. The Committee will want to see that you understand the Act and have a legally defensible protocol to follow with regard to it. When arranging for including in your research people who lack capacity to consent it is important to follow the principles of the Act, and to articulate these in the precise terms of the Act. The Act provides a very structured process, with clear terminology and definitions to work with.

It may be that you understand the principles and intend to follow them in your research protocol, but if you set out your plans in your application to the ethics committee in terms not used in the Act, the ethics committee will be very reluctant to approve your proposal. As legislation, the ethics committee will need to see clearly that you are following the Act. For example, the act requires researchers to seek advice from a (personal or nominated) *consultee* when seeking to include someone who lacks capacity. Consultees should be referred to as such for their role in relation to the MCA, not as carers or other terms. Also, the protocol and ethics form should be clear that consultees do not give consent, only advice.

Being inclusive has implications for time and resources for a study and for the training of researchers. It may be that you need to develop forms of communication for those not easily able to communicate. It is likely to take time to work through the processes of seeking advice from consultees. Researchers need to fully understand the Act and the research protocol. These are, though, elements that should be anticipated when a research proposal is being prepared and can be planned and costed for.

It is not always appropriate, necessary, practical nor legal to include people who lack capacity to consent to participate in your research. However, exclusion should only happen after

consideration of the project and the MCA, not simply assumed at the start as the easiest option for the research.

Some further reading you might like to consider:

- For a handy overview of the history of, and current processes for, research ethics and governance see the helpful SSCR methods review by John Woolham)
- The NIHR School for Social Care Research has held two workshops about research ethics and governance, including the MCA. View the slides from these, including a section on the MCA
- The Social Care Research Ethics Committee has helpful information on its website and is very good at helping guide people through the system of applying for ethical approval
- The Department of Health has produced a helpful summary of the MCA for social scientists
- Clear guidance for the whole of the Act is provided in the Code of Practice is available online.

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